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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 MARY LI and REBECCA KENNEDY;
7 STEPHEN KNOX, M.D., and ERIC
8 WARSHAW, M.D.; KELLY BURKE and
9 DOLORES DOYLE; DONNA POTTER and
10 PAMELA MOEN; DOMINICK VETRI and
11 DOUGLAS DEWITT; SALLY SHEKLOW and
12 ENID LEFTON; IRENE FARRERA and NINA
13 KORICAN; WALTER FRANKEL and
14 CURTIS KIEFER; JULIE WILLIAMS and
15 COLEEN BELISLE; BASIC RIGHTS
16 OREGON; and AMERICAN CIVIL
17 LIBERTIES UNION OF OREGON,

18 Plaintiffs,

19 and

20 MULTNOMAH COUNTY,

21 Intervenor-Plaintiff,

22 vs.

23 STATE OF OREGON; THEODORE
24 KULONGOSKI, in his official capacity as
25 Governor of the State of Oregon, HARDY
26 MYERS, in his official capacity as Attorney
General of the State of Oregon; GARY
WEEKS, in his official capacity as Director of
the Department of Human Services of the State
of Oregon; and JENNIFER WOODWARD, in
her official capacity as State Registrar of the
State of Oregon,

27 Defendants,

28 and

29 DEFENSE OF MARRIAGE COALITION,
30 CECIL MICHAEL THOMAS, NANCY JO
31 THOMAS, DAN MATES, and DICK
32 OSBORNE,

33 Intervenor-Defendants.

No. 0403-03057

FIRST AMENDED COMPLAINT

**(Uniform Declaratory Judgments
Act; in the alternative, APA
Petition for Review of Order; in
the alternative, Petition for Writ
of Mandamus)**

**(Not subject to mandatory
arbitration)**

1 For their complaint, plaintiffs Mary Li and Rebecca (Becky) Kennedy, Stephen
2 (Steve) Knox, M.D., and Eric Warshaw, M.D., Kelly Burke and Dolores Doyle, Donna
3 (Katie) Potter and Pamela (Pam) Moen, Dominick (Dom) Vetri and Douglas (Doug)
4 DeWitt, Sally Sheklow and Enid Lefton, Irene Farrera and Nina Korican, Walter Frankel
5 and Curtis Kiefer, Julie Williams and Coleen Belisle, Basic Rights Oregon (BRO), and
6 American Civil Liberties Union of Oregon (ACLU of Oregon) allege as follows:

7 **NATURE OF THE ACTION**

8 1.

9 Marriage is the established social structure in which two people commit to a
10 shared life. When two people enter into a marriage, they express their commitment in a
11 way that is universally honored as a commitment of the highest order. Moreover, when
12 two people enter into a marriage, they and their children are assured uniform recognition
13 as a family unit.

14 2.

15 Marriage is also a complex legal structure that reflects the extraordinary
16 commitment made by married couples. Laws concerning property and finance reflect the
17 understanding that two people who make the commitment at the heart of marriage
18 function generally not as two individuals but as one couple. Laws concerning decision
19 making in times of medical crisis reflect the understanding that, when a married person is
20 incapacitated, it is generally his or her spouse who is in the best position to know what he
21 or she would want for himself or herself. And laws concerning death and dying reflect
22 the understanding that the person most central in a married person's life is generally his
23 or her spouse. These are but a few of the hundreds of ways in which laws have been built
24 up around marriage to protect married couples and their children.

1 3.

2 In the past, marriage was a much more exclusive and restrictive institution than it
3 is today. Marriage equality was selectively denied to disfavored groups based on
4 disability, religion, class, and race. The history of the nation includes laws prohibiting
5 epileptics from marrying and laws restricting interfaith marriage. It also includes
6 prohibitions on marriages of slaves and indentured servants. And, little more than half a
7 century ago, laws prohibiting interracial marriages were still on the books in thirty states.
8 Moreover, as a historical matter, marriage was far from an equal partnership. Married
9 women were legally incapable in matters of property and finance, and married men were
10 legally less capable in matters of child rearing. The historical subordination of women to
11 men within the institution of marriage was further reflected in laws ranging from the
12 marital exception to rape, to the inability to sue for loss of consortium, to the inability to
13 retain a maiden name. Both socially and legally, marriage has evolved to redress such
14 exclusions, restrictions, and inequalities.

15 4.

16 The Oregon statutory code does not permit marriages of lesbian and gay couples.
17 It is this selective denial of marriage equality to this disfavored group that has led to this
18 action.

19 5.

20 Plaintiffs include nine Oregon lesbian and gay couples who seek to protect
21 themselves and their children by availing themselves of marriage, the social validation
22 that it confers, and the hundreds of rights, responsibilities, benefits, and obligations that it
23 affords. Their life stories present only snapshots of the discrimination that lesbian and
24 gay families throughout Oregon confront because lesbian and gay couples are not
25 permitted to marry. But their life stories are representative of the needs – acute and
26 chronic, numerous and various – of the tens of thousands of lesbian and gay families

1 throughout Oregon, all of which flow from the exclusion of lesbian and gay couples from
2 marriage. As plaintiffs' life stories demonstrate, these needs range from access to health
3 insurance, to the right to hospital visitation, to the security of death benefits. Indeed, the
4 exclusion of lesbian and gay couples from marriage necessarily excludes them from over
5 500 rights, responsibilities, benefits, and obligations that are predicated on marriage
6 under the laws of Oregon. These include protections such as the exception that permits
7 the spouse of a Medicaid beneficiary to keep his or her house when the state seeks to
8 foreclose on the house to recoup the cost of the Medicaid beneficiary's long-term care,
9 the safeguard of intestate succession when a spouse dies without a valid will, and the
10 ability of one spouse to sue for the wrongful death of the other spouse. Above and
11 beyond such tangible harms, there is an immeasurable dignitary harm to lesbian and gay
12 couples and their children when the laws of their state make their families strangers to
13 society. The exclusion of lesbian and gay couples from marriage stigmatizes them and
14 their children as second-class citizens.

15 6.

16 Article I, section 20 of the Oregon constitution does not tolerate such unjustified
17 discrimination against a disfavored class. The exclusion of lesbian and gay couples from
18 marriage violates this most basic constitutional guarantee of equality of privileges and
19 immunities for all Oregonians.

20 **JURISDICTION AND VENUE**

21 7.

22 The Court has jurisdiction over this action pursuant to ORS 28.010, ORS
23 183.484(1), and ORS 34.120(1).

24 8.

25 Venue is proper pursuant to ORS 14.050(2) because defendant Woodward
26 executes her duties in Multnomah County.

1 **PLAINTIFFS**

2 **Mary Li and Becky Kennedy**

3 9.

4 Li and Kennedy reside in Portland in Multnomah County.

5 10.

6 On March 3, 2004, having received a marriage license, Li and Kennedy were
7 married by former Oregon Supreme Court Justice Betty Roberts, becoming the first
8 same-sex couple to marry in Oregon.

9 11.

10 But for the fact that Li and Kennedy are a same-sex couple, the State of Oregon
11 would recognize their marriage. Neither has another living wife or a living husband.
12 They are not first cousins or any nearer of kin to each other. Neither is incapable for
13 want of legal age or sufficient understanding. They consented freely to marry each other.

14 12.

15 Li and Kennedy met in 2000. They intend to spend the rest of their lives together.
16 At an early stage in their relationship, they knew that they wanted to start a family and
17 raise children. They now have a daughter Ava, born in 2003.

18 13.

19 Li and Kennedy married both to reflect their lifetime commitment to each other
20 and to protect their own family in light of the legal protections that married couples and
21 their children enjoy.

22 14.

23 Li is the sole source of financial support for her family. Kennedy and Ava receive
24 health benefits through her employer, which offers domestic partner as well as spousal
25 health benefits. In the past, Li knew that, if she were ever to leave her employer for
26 another one, she would risk an employer that provided health benefits for spouses but not

1 domestic partners. Moreover, after Ava was born, Li and Kennedy had to retain a lawyer
2 to assist them through adoption proceedings to establish a legally recognized parent-child
3 relationship between Li and Ava. These are just two examples of the worries that they
4 had because they were not married and thereby recognized as a family unit.

5 15.

6 Li and Kennedy recognize that there are other less tangible but no less important
7 benefits of marriage. Their family will benefit from the social recognition that comes
8 with marriage, which will allow them to participate in society to the same extent as other
9 families.

10 16.

11 Li understands what it is like to experience discrimination as a person of color, a
12 woman, and a lesbian. Li's father, who is Chinese, married her mother, who is white, in
13 1963, before the United States Supreme Court finally said that it is unconstitutional for
14 any state to bar marriages between people of different races. She cannot help but to think
15 of her parents and that era when she thinks of her own marriage to Kennedy.

16 **Kelly Burke and Dolores Doyle**

17 17.

18 Burke and Doyle reside in Portland in Multnomah County.

19 18.

20 Burke and Doyle are college sweethearts who, having received a marriage license,
21 married in Multnomah County on March 3, 2004. The timing of their wedding ceremony
22 marked their sixteen-year anniversary.

23 19.

24 But for the fact that Burke and Doyle are a same-sex couple, the State of Oregon
25 would recognize their marriage. Neither has another living wife or a living husband.

1 They are not first cousins or any nearer of kin to each other. Neither is incapable for
2 want of legal age or sufficient understanding. They consented freely to marry each other.

3 20.

4 Burke and Doyle own a home together and have a son Avery. Burke is a stay-at-
5 home mom and a licensed massage therapist. Doyle is an apprentice electrician and
6 provides the sole financial support for her family.

7 21.

8 Burke and Doyle met in 1987 when they were students at Lewis & Clark College.
9 On Christmas Eve of 1991, they registered as domestic partners in Berkeley. It was a
10 declaration of commitment to each other and of their intention to be a family. On their
11 tenth anniversary, they celebrated their relationship with a ceremony in Portland. Over
12 one hundred friends and family members attended the ceremony to endorse and celebrate
13 their union.

14 22.

15 Avery was born in 2001. Because Burke and Doyle were not married, Doyle had
16 to initiate adoption proceedings to ensure that she would be legally recognized as a parent
17 to her child. Burke and Doyle became acutely aware of how vulnerable their family was
18 when, a few days after the birth, Burke was admitted to the hospital for possible blood
19 clots in her leg. Because there was no legally recognized parent-child relationship
20 between Doyle and Avery at the time, even as Burke and Doyle were coping with the
21 medical concern, Burke had to write a hasty statement of her intentions regarding the care
22 and guardianship of Avery if she were to become incapacitated. In this way, the medical
23 concern quickly escalated into a threat to their family's security and future, which
24 exacerbated what was already a time of crisis.

1 23.

2 As a stay-at-home mom, Burke has no employer-sponsored health insurance.
3 Through her employer, Doyle participates in a group health insurance plan that offers
4 coverage to members of an employee's family at no additional charge. In 2003, Doyle
5 formally petitioned her employer for domestic partner health benefits for Burke. The
6 petition was denied because her employer does not recognize domestic partners as family
7 members. As a result, Burke and Doyle have had to pay a significant monthly premium
8 so that Burke can have individual health insurance. This past year, when Doyle was laid
9 off for sixteen weeks due to the poor economy, the struggle to pay for continuing family
10 medical coverage for Doyle and Avery was made much worse by their need to pay for
11 individual health insurance for Burke.

12 24.

13 Burke and Doyle want to live with the confidence that, if one of them
14 unexpectedly dies or becomes disabled or sick, the other will have all of the protections
15 that marriage affords. Although they have tried to make arrangements to maximize
16 economic and legal protections for their family's well-being, marriage affords greater
17 security in light of the many legal benefits that are reserved for spouses.

18 25.

19 Burke and Doyle need the benefits of marriage to protect themselves and their son
20 from economic hardship and discrimination.

21 **Katie Potter and Pam Moen**

22 26.

23 Potter and Moen reside in Portland in Multnomah County.

24 27.

25 Having received a marriage license, Potter and Moen married in Multnomah
26 County on March 3, 2004 in the presence of family and friends. Other than bringing their

1 two children into the world, their marriage was the most significant event of their shared
2 life.

3 28.

4 But for the fact that Potter and Moen are a same-sex couple, the State of Oregon
5 would recognize their marriage. Neither has another living wife or a living husband.
6 They are not first cousins or any nearer of kin to each other. Neither is incapable for
7 want of legal age or sufficient understanding. They consented freely to marry each other.

8 29.

9 Potter and Moen met in the workplace in 1990, fell in love, and have been
10 together in a loving, committed partnership ever since. They are raising two daughters
11 together, McKenzie and Madison.

12 30.

13 Potter and Moen are both Portland police officers. Moen has taken on more of the
14 financial responsibility for their family so that Potter can spend more time at home with
15 their children.

16 31.

17 Moen's position brings her into contact with potentially violent situations. Potter
18 has chosen an off-street position while working part-time to reduce the risk of on-the-job
19 death or disability, a vulnerability of which her family is aware every day given the
20 nature of police work. Potter and Moen's family would suffer a sudden, substantial, and
21 permanent reduction of income should either of them be killed in the line of duty. There
22 are state benefits available to the surviving spouses of police officers killed in the line of
23 duty that serve to stabilize families in just such a tragic circumstance. They include an
24 immediate \$25,000 death benefit, along with health, education, and mortgage benefits.
25 These state benefits are not available to surviving domestic partners of police officers
26 killed in the line of duty.

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32.

Potter and Moen had to retain a lawyer to protect their rights as parents; Moen had to adopt the children they had planned together to ensure that she could keep their children if something were to happen to Potter. They prepared wills as rights of inheritance did not exist for them. They prepared advance directives as the ability to make medical decisions for each other was not assured for them.

33.

Potter and Moen’s status as registered domestic partners has not provided them full equality with married couples, either in terms of tangible rights and benefits or in terms of social recognition that they seek for themselves and their daughters.

34.

Potter and Moen are concerned that the exclusion of same-sex couples from marriage sends a message to their daughters that their family is unworthy. They want their daughters to be able to feel like they fully belong in the community because their family has a value equal to those of their friends.

Steve Knox, M.D., and Eric Warshaw, M.D.

35.

Knox and Warshaw reside in Portland in Multnomah County.

36.

On March 3, 2004, having received a marriage license, Knox and Warshaw became the second same-sex couple to marry in Oregon. Presiding over this personally momentous event was former Oregon Supreme Court Justice Betty Roberts. Among those present at their wedding ceremony were their three children, Adam, Isaac, and Tillie.

1 37.

2 But for the fact that Knox and Warshaw are a same-sex couple, the State of
3 Oregon would recognize their marriage. Neither has another living husband or a living
4 wife. They are not first cousins or any nearer of kin to each other. Neither is incapable
5 for want of legal age or sufficient understanding. They consented freely to marry each
6 other.

7 38.

8 Knox and Warshaw, both physicians, were in a committed relationship for over
9 ten years prior to their marriage. They have supported each other financially, including a
10 three-year period when Warshaw supported Knox while Knox completed a second
11 residency. They own a home together. They practice a common faith. They have
12 adopted three children together.

13 39.

14 Although Knox and Warshaw have the commitment of a married couple, they and
15 their children lack the legal protections that come with marriage.

16 40.

17 Prior to the marriage, Adam began inquiring whether “Dad” and “Daddy” were
18 married. Knox and Warshaw had to explain to him that they were “almost” married in
19 that they share their love, home, and family, but had to acknowledge to him that they
20 lacked “the piece of paper” that he knew that married couples have. In light of their
21 marriage, Knox and Warshaw can now tell their children that they no longer lack “the
22 piece of paper.” Their hope is that their children no longer need to feel that their family
23 is less worthy in the eyes of others for lack of “the piece of paper.”

24 **Dom Vetri and Doug DeWitt**

25 41.

26 Vetri and DeWitt reside in Brownsville in Linn County.

1 42.

2 But for the fact that Vetri and DeWitt are a same-sex couple, the State of Oregon
3 would permit them to marry. Neither has a living husband or a living wife. They are not
4 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age
5 or sufficient understanding.

6 43.

7 Vetri, 65, is a professor of law at the University of Oregon School of Law.
8 DeWitt, 53, is a fitness trainer. They have been in a committed, caring, and loving
9 relationship together for over 26 years.

10 44.

11 Vetri and DeWitt understand that they do not have the many benefits and
12 protections that married couples enjoy. One important example is that, while Vetri works
13 as a law professor, DeWitt is eligible to participate in the group health insurance program
14 of the State Board of Higher Education just as a marital partner would be. But, upon
15 Vetri's retirement, DeWitt, unlike a marital partner, will not be eligible to participate in
16 the group health insurance plan under the Public Employees Retirement System unless
17 his income is such as to qualify him as a tax dependent.

18 45.

19 Vetri and DeWitt have not sought a marriage license from Multnomah County or
20 any other county in Oregon. They want to have the option of marrying in the future if
21 they decide that that is the right course for themselves.

22 **Sally Sheklow and Enid Lefton**

23 46.

24 Sheklow and Lefton reside in Eugene in Lane County.
25
26

1 47.

2 But for the fact that Sheklow and Lefton are a same-sex couple, the State of
3 Oregon would permit them to marry. Neither has a living wife or a living husband. They
4 are not first cousins or any nearer of kin to each other. Neither is incapable for want of
5 legal age or sufficient understanding.

6 48.

7 Sheklow and Lefton have been in a committed, caring, loving relationship since
8 1987. They received the William Sloat Memorial Valued Family Award in 1995 in
9 recognition of their strong example of a loving, same-sex couple. They share a passion
10 for theater and community activism and also share a Jewish heritage. Together, they
11 have deepened their spiritual connection to Judaism and have come to embrace more
12 thoroughly the values of their faith, which teaches them to dedicate their lives to making
13 the world a better place for everyone.

14 49.

15 In 1998, Sheklow and Lefton planned a wedding ceremony. In anticipation, they
16 met with their rabbi over a period of five months to prepare themselves for marriage.
17 They, along with their family and friends, participated in a religious wedding ceremony
18 on June 21, 1998.

19 50.

20 Because Sheklow and Lefton are not legally married, Lefton cannot cover
21 Sheklow through her employer-sponsored health plan. Sheklow, a self-employed writer
22 and part-time teacher, is currently uninsured.

23 51.

24 Sheklow and Lefton are not eligible for the same spousal retirement and social
25 security benefits as legally married couples. They also fear what might happen when one
26

1 of them dies. They do not have the legal protections that legally married couples enjoy
2 with respect to such matters as bereavement leave.

3 52.

4 On March 22, 2004, Sheklow and Lefton presented a completed application and
5 the license fee to and asked for a marriage license from Lane County. They were refused
6 a license because they are a same-sex couple. The supervisor of the office that issues
7 licenses explained that licenses could not issue for the reasons in the Lane County
8 Counsel's opinion and provided a copy of it. In part, that opinion advises that ORS
9 106.010 should be read as requiring marriage between a man and a woman and notes that
10 the conclusion of the Multnomah County Attorney and the Oregon Attorney General on
11 the statute are the same.

12 53.

13 Sheklow and Lefton want their relationship to be recognized as a legal marriage.
14 It is important to them that they obtain their marriage license from Lane County, just as
15 other Lane County couples do. They do not want to go to Multnomah County or any
16 other jurisdiction. They feel that they should not have to do so. They live in Lane
17 County. They pay taxes in Lane County. They want a marriage license from Lane
18 County, something that has been denied to them solely because they are a same-sex
19 couple and because of an existing state statute, ORS 106.010.

20 **Irene Farrera and Nina Korican**

21 54.

22 Farrera and Korican reside in Eugene in Lane County.

23 55.

24 But for the fact that Farrera and Korican are a same-sex couple, the State of
25 Oregon would permit them to marry. Neither has a living wife or a living husband. They
26

1 are not first cousins or any nearer of kin to each other. Neither is incapable for want of
2 legal age or sufficient understanding.

3 56.

4 Farrera and Korican began their relationship in 1992. In 1993, Ferrara and
5 Korican decided to share all aspects of their lives with each other, and began sharing a
6 home in Eugene.

7 57.

8 On September 4, 1994, they celebrated their wedding with family members and
9 friends. Their ceremony was based on Jewish tradition and was officiated by their
10 rabbi's wife. The rabbi of Eugene's largest synagogue attended and gave them a
11 blessing, the first time he had ever blessed a same-sex couple. Their relationship gained
12 legitimacy in the eyes of their families, their friends, and their community. It was the
13 happiest day of their shared life.

14 58.

15 From 1993 to 2003, Farrera and Korican worked together in their own business,
16 Farrera as a touring musician and Korican as her agent and manager. All of their time,
17 energy, and resources went into the success of Farrera's music career. They traveled the
18 world together as a couple, but Farrera also did many tours alone. Often, Farrera worried
19 about what would happen if she were hospitalized far away from home. She knew that,
20 whatever recognition of their relationship they enjoyed in Eugene would serve as no
21 guarantee of recognition elsewhere. She worried about Korican's ability to make medical
22 decisions on her behalf, or to visit her in the hospital.

23 59.

24 In 2003, Korican went to work for Temple Beth Israel in Eugene, and Farrera
25 began doing freelance interpreting and translating along with her music. Now that
26 Korican has employer-sponsored benefits, Farrera and Korican would like for Farrera to

1 have the same benefits options as those of the spouses of Korican's married co-workers.
2 And, as they near retirement, they have concerns about retirement and social security
3 benefits. Marriage would help them feel more financially secure.

4 60.

5 Farrera and Korican believe that, by not permitting or recognizing marriages of
6 same-sex couples, the state sends a stigmatizing message that they are less worthy than
7 other Oregonians and that their relationship is inferior to those of other Oregonians.

8 61.

9 Farrera was born and raised in Venezuela and moved to the United States in 1971.
10 During many of those years, Farrera lived illegally in the United States. At the time, she
11 was in a long-term relationship with a former partner. They would have gotten married if
12 it had been an option. But, because they were a same-sex couple, it was not an option.
13 Unlike heterosexual bi-national couples who fall in love, they did not have the benefit of
14 marriage to initiate the citizenship process. And so Farrera lived in fear of being
15 deported and separated from her then partner. In addition, Farrera could not travel to
16 Venezuela to visit her family for fear of not being able to return to her home and her then
17 partner. Farrera is now a United States citizen.

18 62.

19 On March 22, 2004, Farrera and Korican presented a completed application and
20 the license fee to and asked for a marriage license from Lane County. They were refused
21 a license because they are a same-sex couple. The supervisor of the office that issues
22 licenses explained that licenses could not issue for the reasons in the Lane County
23 Counsel's opinion and provided a copy of it. In part, that opinion advises that ORS
24 106.010 should be read as requiring marriage between a man and a woman and notes that
25 the conclusion of the Multnomah County Attorney and the Oregon Attorney General on
26 the statute are the same.

1 63.

2 Farrera and Korican want to get married in Lane County because it is where they
3 live. It is their community, to which they both have contributed much. They pay taxes in
4 Lane County, they volunteer for organizations in Lane County, and they are active
5 citizens in Lane County. They feel that, by not being allowed to obtain a marriage
6 license in their hometown solely because they are a same-sex couple and because of an
7 existing state statute, ORS 106.010, they are being treated like second-class citizens.

8 **Walter Frankel and Curtis Kiefer**

9 64.

10 Frankel and Kiefer reside in Corvallis in Benton County.

11 65.

12 But for the fact that Frankel and Kiefer are a same-sex couple, the State of Oregon
13 would permit them to marry. Neither has a living husband or a living wife. They are not
14 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age
15 or sufficient understanding.

16 66.

17 Frankel and Kiefer met in 1981 and have been a committed, loving couple ever
18 since.

19 67.

20 Frankel is 65, and Kiefer is 52. They love each other very much, want to grow
21 old with each other, and intend to spend the rest of their lives together.

22 68.

23 Frankel was a librarian for 36 years. He retired from the Corvallis-Benton County
24 Public Library in 2000. Kiefer has been employed by the Corvallis-Benton County
25 Public Library for ten years.

1 69.

2 Especially as they age, Frankel and Kiefer want the legal protections that married
3 couples enjoy. Among them are right of a surviving spouse to be the beneficiary of a
4 deceased spouse's pension and Social Security benefits; the right of a surviving spouse to
5 dispose of a deceased spouse's remains; the right of a well spouse to visit a sick spouse in
6 the hospital; the right of a well spouse to make medical decisions for an incapacitated
7 spouse; and the rights of inheritance and exemption from certain taxation that spouses
8 enjoy.

9 70.

10 Frankel is not permitted to name Kiefer as the beneficiary of several of his
11 retirement accounts because Kiefer is not considered a family member.

12 71.

13 Kiefer's mother lived with Frankel and Kiefer for thirteen years. Together, they
14 cared for her. Yet, when she was dying in the intensive care unit, Frankel was not
15 considered a part of her family for purposes of visitation. Kiefer had to explain to the
16 hospital Frankel's relationship to Kiefer's mother. This is something a spouse would not
17 have had to explain. In light of this experience, Frankel is now apprehensive about
18 Frankel and Kiefer having access to one another during a medical emergency.

19 72.

20 Frankel and Kiefer would have sought a marriage license from Benton County if
21 it had not reversed its decision to issue marriage licenses to same-sex couples. It is
22 important to them that they receive their marriage license from Benton County. They
23 feel strongly about their community and the equal treatment of same-sex couples that
24 they expect from it.

Julie Williams and Coleen Belisle

73.

Williams and Belisle reside in Corvallis in Benton County.

74.

But for the fact that Williams and Belisle are a same-sex couple, the State of Oregon would permit them to marry. Neither has a living wife or a living husband. They are not first cousins or any nearer of kin to each other. Neither is incapable for want of legal age or sufficient understanding.

75.

Williams and Belisle met in 1999 and soon entered into a committed, loving relationship.

76.

Williams teaches health and physical education at Corvallis High School. She has been an employee of the school district for over seventeen years. Belisle is a home health registered nurse.

77.

Williams and Belisle seek for themselves the legal protections that married couples enjoy. They know that, if they were married, they would have a greater sense of security, safety, and equality.

78.

Williams and Belisle would have sought a marriage license from Benton County if it had not reversed its decision to issue marriage licenses to same-sex couples. It is important to them to receive a marriage license from Benton County, as longtime members of the Corvallis community. Indeed, Williams grew up in Corvallis, attended Corvallis High School, and has lived in Corvallis for 41 years. She wants to obtain a marriage license from the county where she has roots and lives.

1 79.

2 Moreover, Williams and Belisle want Williams's parents, who also live in Benton
3 County, to be present when they obtain their marriage license. Williams's parents both
4 have serious health problems, and Williams and Belisle have become their primary
5 caretakers. It would be a considerable burden on them and their family if they were
6 forced to travel to obtain a marriage license.

7 **Basic Rights Oregon**

8 80.

9 BRO is a statewide civil rights organization dedicated to advocacy for equal
10 rights, including equal marriage rights, for lesbian, gay, bisexual, and transgender
11 Oregonians.

12 81.

13 BRO has a strong interest in marriage equality for lesbian and gay couples. Over
14 the past several years, BRO has devoted a considerable amount of its resources to
15 educating Oregon communities and their leaders about why same-sex couples need and
16 deserve equal marriage rights. The fact that Multnomah County is now issuing marriage
17 licenses to same-sex couples and same-sex couples are now getting married is a reflection
18 of years of work by BRO.

19 **American Civil Liberties Union of Oregon**

20 82.

21 The ACLU of Oregon is a statewide organization dedicated to defending the civil
22 liberties and advancing the civil rights of all Oregonians, including lesbian and gay
23 Oregonians. The ACLU of Oregon is a non-profit, non-partisan affiliate of the American
24 Civil Liberties Union, a nationwide, non-profit, non-partisan organization with a
25 membership in the hundreds of thousands.

1 83.

2 The ACLU of Oregon exclusively dedicates its efforts to preserving and
3 advancing the rights guaranteed by the federal and state constitutions and by federal,
4 state, and local civil rights and civil liberties laws. The ACLU of Oregon has appeared as
5 counsel or amicus curiae in dozens of cases in federal and state courts involving the
6 Oregon constitution, Oregon statutes, and the legal rights of lesbians and gay men.

7 84.

8 The ACLU of Oregon has over 7,500 members. They include same-sex couples
9 who either have marriage licenses and are married, or seek to have marriage licenses and
10 be married.

11 85.

12 The ACLU of Oregon has a strong interest in marriage equality for lesbian and
13 gay couples. In its estimation, the Oregon constitution guarantees lesbian and gay
14 couples equal treatment with respect to laws concerning marriage.

15 **DEFENDANTS**

16 86.

17 Defendant State of Oregon is a state organized and existing under the Oregon
18 constitution.

19 87.

20 Defendant Kulongoski is sued in his official capacity as Governor of the State of
21 Oregon. Defendant Kulongoski has a duty to execute the laws of the State of Oregon.

22 88.

23 Defendant Myers is sued in his official capacity as Attorney General of the State
24 of Oregon. Defendant Myers has a duty to enforce the laws of the State of Oregon.

1 89.

2 Defendant Weeks is sued in his official capacity as Director of the Department of
3 Human Services of the State of Oregon. Among other duties, Defendant Weeks has a
4 duty to oversee the Center for Health Statistics.

5 90.

6 Defendant Woodward is sued in her official capacity as State Registrar of the
7 State of Oregon. Among other duties, Defendant Woodward has a duty to record
8 marriages that are licensed and solemnized in Oregon.

9 **GENERAL ALLEGATIONS**

10 91.

11 The Oregon statutory code does not permit marriages of same-sex couples. In
12 particular, ORS 106.010 provides that “[m]arriage is a civil contract entered into in
13 person by males at least 17 years of age and females at least 17 years of age, who are
14 otherwise capable, and solemnized in accordance with ORS 106.150.”

15 92.

16 In light of a legal opinion rendered by her counsel, the Chair of the Board of
17 County Commissioners of Multnomah County realized that her execution of county
18 practices concerning the issuance of marriage licenses was in clear violation of the
19 Oregon constitution. Specifically, she realized that county practices denying marriage
20 licenses to same-sex couples were a form of clearly unconstitutional discrimination
21 between same-sex and different-sex couples. In light of her oath to uphold the Oregon
22 constitution, she recognized that she had a constitutional obligation to ensure that such
23 clearly unconstitutional discrimination ceased. Accordingly, on March 3, 2004, she took
24 executive action to ensure the issuance of marriage licenses to same-sex and different-sex
25 couples on equal terms by Multnomah County.

26

1 93.

2 Since March 3, 2004, Multnomah County has issued marriage licenses to
3 thousands of same-sex couples, including plaintiffs Li and Kennedy, Knox and Warshaw,
4 Burke and Doyle, and Potter and Moen. Many, if not most, of these same-sex couples,
5 including plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter
6 and Moen, have entered into solemnized marriages.

7 94.

8 On March 12, 2004, in response to the issuance of marriage licenses to same-sex
9 and different-sex couples on equal terms by Multnomah County, defendant Myers issued
10 a legal opinion that confirmed that the Oregon statutory code prohibits marriages of
11 same-sex couples. Specifically, defendant Myers “conclude[d] that existing Oregon
12 statutes authorize issuance of a marriage license only to one man and one woman.”

13 95.

14 On March 12, 2004, defendant Kulongoski accepted the legal opinion of
15 defendant Myers.

16 96.

17 At a press conference on March 12, 2004, defendants Kulongoski and Myers
18 confirmed that the Oregon statutory code does not permit marriages of same-sex couples.
19 Defendants Kulongoski and Myers urged all Oregon counties to refuse to issue marriage
20 licenses to same-sex couples because the Oregon statutory code does not permit
21 marriages of same-sex couples. Defendant Kulongoski directed, and defendant Myers
22 counseled, all Oregon agencies, including the Center for Health Statistics, to refuse to
23 recognize marriages of same-sex couples.

24 97.

25 On March 15, 2004, defendant Kulongoski issued a press release in which he
26 confirmed that he “[had] directed all state agencies to adhere to current statutes, which do
not recognize same-sex marriages.”

1 98.

2 On March 16, 2004, the Board of County Commissioners of Benton County took
3 legislative action to ensure the issuance of marriage licenses to same-sex and different-
4 sex couples on equal terms by Benton County beginning on March 24, 2004. Thereafter,
5 defendants Kulongoski and Myers began to pressure the Board of County Commissioners
6 of Benton County to reverse its legislative action and to refuse to issue marriage licenses
7 to same-sex couples because the Oregon statutory code does not permit marriages of
8 same-sex couples. Defendants Kulongoski and Myers went so far as to threaten
9 aggressive litigation against Benton County.

10 99.

11 On March 17, 2004, the County Counsel of Lane County issued a legal opinion
12 that confirmed that the Oregon statutory code prohibits marriages of same-sex couples.
13 Consistent with the urgings of defendants Kulongoski and Myers, the Chief Deputy
14 County Clerk of Lane County accepted the legal opinion of her counsel and refused to
15 issue marriage licenses to same-sex couples because the Oregon statutory code does not
16 permit marriages of same-sex couples.

17 100.

18 On March 18, 2004, defendant Myers sent letters to all Oregon counties in which
19 he confirmed that he “[had] analyzed our state’s marriage statutes and concluded that
20 current law defines marriage as a union between a male and a female.” Defendant Myers
21 further confirmed that “state agencies will not recognize the validity of same-sex
22 marriages until and unless directed to do so by the judicial branch.” Defendant Myers
23 went on to specify that “[a] document purporting to be a record of the marriage of a man
24 and a man or a woman and a woman would not be a record of a ‘marriage’ performed in
25 this state which the Registrar would be required to register, because existing law does not
26 authorize the ‘marriage’ of a man and a man or a woman and a woman.”

101.

On March 19, 2004, defendant Myers issued a press release in which he confirmed that he “[had] [written] to the clerks of each of Oregon’s 36 counties to inform them that the State Registrar would not accept for registration any marriage certificate for a same-sex marriage,” and in which he “urged every county, including Benton County, to defer issuing any marriage licenses to same-sex couples at least until the Multnomah County Circuit Court can rule on the constitutional issues” in this action.

102.

On March 22, 2004, plaintiffs Sheklow and Lefton, and Farrera and Korican, who for personal reasons seek marriage licenses from Lane County in particular, properly tendered to the office of the County Clerk of Lane County all of the paperwork and fees necessary to obtain marriage licenses. Consistent with the urgings of defendants Kulongoski and Myers, the office of the County Clerk of Lane County refused to issue marriage licenses to plaintiffs Sheklow and Lefton, and Farrera and Korican for the sole reason that they are same-sex couples. The office of the County Clerk of Lane County offered the legal opinion issued by the County Counsel of Lane County as its sole justification.

103.

On March 22, 2004, defendants Kulongoski and Myers succeeded in pressuring the Board of County Commissioners of Benton County to reverse its legislative action and to refuse to issue marriage licenses to same-sex couples because the Oregon statutory code does not permit marriages of same-sex couples. In reversing its legislative action, the Board of County Commissioners of Benton County “voted unanimously to temporarily postpone issuing marriage licenses to couples, regardless of sexual orientation, pending a resolution by the State Courts on the constitutional challenge to Oregon statutes regarding marriage” beginning on March 24, 2004. It indicated that

1 “[t]he action was subsequent to a request by the State’s Attorney General Hardy Myers to
2 temporarily postpone issuing marriage licenses to same-sex couples.” In response,
3 Defendant Myers issued a statement in which he stated that “[t]he decision ensures that
4 marriage licenses will not be issued in violation of Oregon statutes in Benton County.”

5 104.

6 Plaintiffs Frankel and Kiefer, and Williams and Belisle, who for personal reasons
7 seek marriage licenses from Benton County in particular, would have properly tendered
8 to the office of the County Clerk of Benton County all of the paperwork and fees
9 necessary to obtain marriage licenses had the Board of County Commissioners of Benton
10 County not reversed its legislative action.

11 105.

12 Consistent with the urgings of defendants Kulongoski and Myers, most Oregon
13 counties have refused to issue marriage licenses to same-sex couples because the Oregon
14 statutory code does not permit marriages of same-sex couples. For example, Washington
15 County has posted on its website a notice that “Oregon state law does not allow a
16 marriage license to be issued to parties of the same gender.”

17 106.

18 On March 23, 2004, in response to the directive of defendant Kulongoski and the
19 counsel of defendant Myers, defendants Weeks and Woodward issued letters refusing to
20 file and register the marriage records of plaintiffs Li and Kennedy, Knox and Warshaw,
21 Burke and Doyle, and Potter and Moen because the Oregon statutory code does not
22 permit marriages of same-sex couples.

23 107.

24 At this time, defendants have confirmed that the Oregon statutory code does not
25 permit marriages of same-sex couples. The fact that the Oregon statutory code does not
26 permit marriages of same-sex couples has the practical effect of directly and substantially

harming all plaintiff couples in that it excludes them from marriage, the social validation that it confers, and the hundreds of rights, responsibilities, benefits, and obligations that it affords.

108.

Defendants Kulongoski and Myers have also succeeded in pressuring Oregon counties to refuse to issue marriage licenses to same-sex couples because the Oregon statutory code does not permit marriages of same-sex couples. The fact that Benton County has refused to issue marriage licenses to same-sex couples as a result of defendants' actions and in light of the Oregon statutory code has the practical effect of directly and substantially harming plaintiffs Frankel and Kiefer, Williams and Belisle, and Vetri and DeWitt. Similarly, the fact that Lane County has refused to issue marriage licenses to same-sex couples as a result of defendants' actions and in light of the Oregon statutory code has the practical effect of directly and substantially harming plaintiffs Sheklow and Lefton, Farrera and Korican, and Vetri and DeWitt. These plaintiff couples are excluded from marriage, the social validation that it confers, and the hundreds of rights, responsibilities, benefits, and obligations that it affords.

109.

Furthermore, defendants Kulongoski and Myers have directed and counseled Oregon agencies, including the Center for Health Statistics, to refuse to recognize marriages of same-sex couples because the Oregon statutory code does not permit marriages of same-sex couples. As a result, defendants Weeks and Woodward have issued final agency orders refusing to file and register the marriage records of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen because the Oregon statutory code does not permit marriages of same-sex couples. These final agency orders have the practical effect of directly and substantially harming these plaintiffs couples in that they deny them the benefit of ensuring that their marriages

1 records are publicly available for official confirmation of the existence of their marriages,
2 a benefit that they need to eliminate any doubt about the validity of their marriages.

3 **FIRST CLAIM FOR RELIEF**

4 **(Uniform Declaratory Judgments Act;**
5 **all plaintiff couples against all defendants)**

6 110.

7 Paragraphs 1-109 of this complaint are incorporated by reference.

8 111.

9 The Oregon statutory code does not permit marriages of same-sex couples.

10 112.

11 Defendants Kulongoski, Myers, Weeks, and Woodward have confirmed that the
12 Oregon statutory code does not permit marriages of same-sex couples, and have asserted
13 the Oregon statutory code as the basis for their conduct in urging Oregon counties to
14 refuse to issue marriage licenses to same-sex couples and in directing and counseling
15 Oregon agencies to refuse to recognize marriages of same-sex couples.

16 113.

17 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
18 privilege or immunity based on sexual orientation or gender.

19 114.

20 The failure to permit marriages of same-sex couples constitutes an unjustified
21 denial of a privilege and therefore constitutes a violation of the Oregon constitution.

22 115.

23 Plaintiffs are entitled to attorney fees and costs pursuant to Deras v. Myers,
24 272 Or 47, 66 (1975) (court's inherent power to award fees), ORS 28.100 (costs under
25 the Declaratory Judgments Act), ORCP 68 B, and ORS 20.107.

26

1 **SECOND CLAIM FOR RELIEF**

2 **(Uniform Declaratory Judgments Act;**

3 **all plaintiff couples against all defendants)**

4 116.

5 Paragraphs 1-109 of this complaint are incorporated by reference.

6 117.

7 The Oregon statutory code does not permit marriages of same-sex couples.

8 118.

9 Because the Oregon statutory code does not permit marriages of same-sex
10 couples, defendants Kulongoski, Myers, Weeks, and Woodward have refused to file and
11 register the marriage records of same-sex couples licensed and solemnized in Oregon,
12 including those of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and
13 Potter and Moen.

14 119.

15 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
16 privilege or immunity based on sexual orientation or gender.

17 120.

18 The refusal to record the marriages of same-sex couples licensed and solemnized
19 in Oregon, including those of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and
20 Doyle, and Potter and Moen, constitutes an unjustified denial of a privilege and therefore
21 constitutes a violation of the Oregon constitution.

22 121.

23 Plaintiffs are entitled to attorney fees and costs pursuant to Deras v. Myers, 272
24 Or 47, 66 (1975) (court's inherent power to award fees), ORS 28.100 (costs under the
25 Declaratory Judgments Act), ORCP 68 B, and ORS 20.107.

1 **THIRD CLAIM FOR RELIEF**

2 **(alternative APA Petition for Review of Order;**
3 **plaintiffs/petitioners Li and Kennedy, Knox and Warshaw, Burke and Doyle,**
4 **and Potter and Moen against defendants Weeks and Woodward)**

5 122.

6 Paragraphs 1-109 of this complaint are incorporated by reference.

7 123.

8 In an other than contested case, defendants Weeks and Woodward issued final
9 agency orders refusing to file and register the marriage records of plaintiffs/petitioners Li
10 and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen.

11 124.

12 Defendants Weeks and Woodward did so as directed by defendant Kulongoski
13 and counseled by defendant Myers because the Oregon statutory code does not permit
14 marriages of same-sex couples.

15 125.

16 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
17 privilege or immunity based on sexual orientation or gender.

18 126.

19 The refusal to record the marriages of plaintiffs/petitioners Li and Kennedy, Knox
20 and Warshaw, Burke and Doyle, and Potter and Moen constitutes an unjustified denial of
21 a privilege and therefore constitutes a violation of the Oregon constitution.

22 127.

23 Plaintiffs/petitioners are entitled to attorney fees and costs pursuant to ORS
24 183.497, ORCP 68 B, and ORS 20.107.

1 **FOURTH CLAIM FOR RELIEF**

2 **(alternative Petition for Writ of Mandamus;**
3 **all plaintiffs against defendant Woodward)**

4 128.

5 Paragraphs 1-109 of this complaint are incorporated by reference.

6 129.

7 This alternative claim for relief is made only to the extent that the preceding
8 claims for relief are determined to be unavailable to plaintiffs.

9 130.

10 Defendant Woodward has a non-discretionary duty to file and register marriage
11 records of marriages that are licensed and solemnized in Oregon.

12 131.

13 Defendant Woodward has failed to perform her non-discretionary duty to file and
14 register marriage records of marriages that are licensed and solemnized in Oregon.
15 Specifically, defendant Woodward has failed to perform her non-discretionary duty to file
16 and register the marriage records of marriages of same-sex couples that are licensed and
17 solemnized in Oregon, including those of plaintiffs Li and Kennedy, Knox and Warshaw,
18 Burke and Doyle, and Potter and Moen.

19 132.

20 Defendant Woodward has failed to do so consistent with the directive of
21 defendant Kulongoski and the counsel of defendant Myers because the Oregon statutory
22 code does not permit marriages of same-sex couples.

23 133.

24 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
25 privilege or immunity based on sexual orientation or gender.

1 134.

2 The failure to perform the non-discretionary duty to record marriages of same-sex
3 couples that are licensed and solemnized in Oregon, including those of
4 plaintiffs/petitioners Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter
5 and Moen, constitutes an unjustified denial of a privilege and therefore constitutes a
6 violation of the Oregon constitution.

7 135.

8 Plaintiffs are entitled to attorney fees and costs pursuant to ORS 34.210, ORCP
9 68 B, ORS 20.107, and Deras v. Myers, 272 Or 47, 66 (1975) (court's inherent power to
10 award fees).

11 WHEREFORE, plaintiffs respectfully ask the Court to grant them the following
12 relief:

13 (a) On their first claim for relief, a judgment declaring that the failure of the
14 Oregon statutory code to permit marriages of same-sex couples violates Article I, section
15 20 of the Oregon constitution;

16 (b) On their second claim for relief, a judgment
17 (1) declaring that the failure of defendants to file and register the marriage
18 records of marriages of same-sex couples licensed and solemnized in Oregon, including
19 those of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and
20 Moen, violates Article I, section 20 of the Oregon constitution,

21 (2) enjoining defendants from directing or counseling Oregon agencies,
22 including the Center for Health Statistics, to refuse to recognize marriages of same-sex
23 couples, and

24 (3) enjoining defendants from refusing to file and register the marriage
25 records of marriages of same-sex couples licensed and solemnized in Oregon, including
26

1 those of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and
2 Moen;

3 (c) On their third claim for relief, and in the alternative to their second claim
4 for relief, a judgment

5 (1) reversing and setting aside the order of defendants Weeks and
6 Woodward refusing to file and register the marriage records of marriages of same-sex
7 couples licensed and solemnized in Oregon, including those of plaintiffs/petitioners Li
8 and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen,

9 (2) remanding to defendants Weeks and Woodward for further action
10 under a correct interpretation of the applicable provisions of law,

11 (3) as further relief appropriate under ORS 183.486, declaring that the
12 failure of the Oregon statutory code to permit marriages of same-sex couples violates
13 Article I, section 20 of the Oregon constitution,

14 (4) as further relief appropriate under ORS 183.486, declaring that the
15 failure of defendants Weeks and Woodward to file and register the marriage records of
16 marriages of same-sex couples licensed and solemnized in Oregon, including those of
17 plaintiffs/petitioners Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter
18 and Moen, violates Article I, section 20 of the Oregon constitution, and

19 (5) as further relief appropriate under ORS 183.486 and ORS 183.490,
20 requiring defendants Weeks and Woodward to file and register the marriage records of
21 marriages of same-sex couples licensed and solemnized in Oregon, including those of
22 plaintiffs/petitioners Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter
23 and Moen;

24 (d) Alternatively, on their fourth claim for relief, and only if no other adequate
25 remedy is available on their first three claims, issuance of an alternative writ of
26 mandamus to defendant Woodward commanding her to file and register the marriage

1 records of marriages of same-sex couples licensed and solemnized in Oregon, including
2 those of plaintiffs/petitioners Li and Kennedy, Knox and Warshaw, Burke and Doyle, and
3 Potter and Moen or to appear and show cause why she has not done so;

4 (e) Awarding plaintiffs their costs and reasonable attorney fees incurred in the
5 prosecution of this action; and

6 (f) Awarding such other relief as the Court may deem just and proper.

7 MARKOWITZ, HERBOLD, GLADE
8 & MEHLHAF, P.C.

9 By:

10 _____
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13
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ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that I have made service of the foregoing _____ on the party/ies listed below in the manner indicated:

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Overnight Courier
<input type="checkbox"/>	Email

DATED this _____ day of _____, 2004.

Lynn R. Nakamoto
OSB #88087
Attorney for

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CERTIFICATE OF SERVICE